Krishnadas a/l Achutan Nair & Ors v Maniyam a/l Samykano

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–182–1993
LAMIN PCA, ANUAR CJ (MALAYA) AND GOPAL SRI RAM JCA
16 DECEMBER 1996

Land Law *— Indefeasibility of title and interests — Determination of title or interests by operation of law — Whether s 340(4)(b) of the National Land Code is another exception to indefeasibility*

The High Court dismissed with costs the appellants' claim against the respondent for declarations seeking to impugn the title of the respondent to the subject land. In giving judgment (see [1993] 3 MLJ 465), the trial judge expressed the view that s 340(4)(b) of the National Land Code 1965 ('the Code'), which states that: 'Nothing in this section shall prejudice or prevent ... the determination of any title or interest by operation of law', could not be regarded as another exception to indefeasibility.

Held, dismissing the appeal:

The trial judge had sufficiently analysed and admirably dealt with the facts of the case, and in reliance on his findings based on the veracity of the witnesses who testified before him and his conclusion thereof, the appellants ought to fail in the action. The trial judge's observations upon s 340(4)(b) of the Code did not affect his decision (see pp 96I and 97A–B).

Per curiam:

(1) Parliament enacted s 340(4)(b) of the Code for the purpose of dealing with fact patterns which did not fall squarely within the other exceptions to indefeasibility which appear in s 340(2) of the Code. It was not possible, nor desirable, to predict with any degree of certainty the wide range of cases that, while failing to come within the vitiating categories specified in s 340(2), may come within the scope of s 340(4)(b) (see p 100D); *Yong Joo Lin & Ors v Fung Poi Fong* [1941] MLJ 63, *Ong Chat Pang & Anor v Valliappa Chettiar* [1971] 1 MLJ 224 and *Dr Benjamin George & Ors v Majlis Perbandaran Ampang Jaya and other applications* [1995] 3 MLJ 665 followed.

(2) Furthermore, it could not be accepted that Parliament intended s 340(4)(b) to have no effect whatsoever or to lack meaning. Prima facie, every word appearing in an Act must bear some meaning. The court was not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. Where it was impossible to give a full and accurate meaning to every word appearing in a section of a statute, the duty of the court was to give the words an

A interpretation 'that produces the greatest harmony and least inconsistency' (see p 101A–C); *Beckwith v R* (1976) 12 ALR 333 and *Australian Alliance Assurance Co Ltd v Attorney-General (Queensland)* (1916) QSR 135 followed.

B **[Bahasa Malaysia summary**

Mahkamah Tinggi telah menolak dengan kos tuntutan perayu terhadap penentang untuk deklarasi yang bertujuan menyangkal hakmilik penentang kepada tanah yang berkenaan. Dalam memberi penghakiman (lihat [1993] 3 MLJ 465), hakim perbicaraan telah
C mengutarakan pendapat bahawa s 340(4)(b) Kanun Tanah Negara 1965 ('Kanun itu'), yang memperuntukkan bahawa: 'Nothing in this section shall prejudice or prevent ... the determination of any title or interest by operation of law', tidak boleh disifatkan sebagai satu lagi kekecualian kepada ketakbolehsangkalan.

D

Diputuskan, menolak rayuan itu:

Hakim perbicaraan telah menganalisa dengan secukupnya dan mempertimbangkan dengan baik fakta-fakta kes ini, dan bergantung kepada dapatan fakta olehnya yang berdasarkan kebolehpercayaan
E saksi-saksi yang memberi keterangan di depannya dan kesimpulan yang dibuatnya, perayu patut gagal dalam tindakan ini. Pendapat hakim perbicaraan tentang s 340(4)(b) Kanun itu tidak membawa kesan ke atas keputusannya (lihat ms 96I dan 97A–B).

F **Per curiam**:

(1) Parlimen telah memperundangkan s 340(4)(b) Kanun itu untuk tujuan mengendalikan keadaan-keadaan fakta yang tidak termasuk sepenuhnya ke dalam kekecualian-kekecualian lain kepada ketakbolehsangkalan yang terdapat dalam s 340(2) Kanun itu. Adalah tidak mungkin, mahupun dikehendaki, untuk
G menjangkakan dengan apa-apa darjah kepastian jenis-jenis kes yang luas yang, sedangkan ianya gagal masuk ke dalam kategori-kategori bolehsangkalan dalam s 340(2), boleh termasuk ke dalam lingkungan s 340(4)(b) (lihat ms 100D); *Yong Joo Lin & Ors v Fung Poi Fong* [1941] MLJ 63, *Ong Chat Pang & Anor v Valliappa*
H *Chettiar* [1971] 1 MLJ 224 dan *Dr Benjamin George & Ors v Majlis Perbandaran Ampang Jaya and other applications* [1995] 3 MLJ 665 diikut.

(2) Lagipun, tidaklah boleh diterima bahawa Parlimen mahukan s 340(4)(b) tidak membawa kesan atau kekurangan makna. Prima
I facie, setiap perkataan yang wujud di dalam sesuatu Akta mesti membawa sesuatu makna. Mahkamah tidak berhak tidak mengendahkan perkataan-perkataan yang digunakan di dalam suatu statut or perundangan subsidiari atau untuk menyifatkan mereka sebagai berlebihan atau tidak penting. Di mana ianya

mustahil untuk memberi makna yang penuh dan tepat kepada setiap perkataan yang wujud di dalam sesuatu seksyen sesuatu statut, tugas mahkamah adalah untuk memberikan perkataan-perkataan itu satu tafsiran 'yang menerbitkan keharmonian yang paling tinggi dan percanggahan yang paling kurang' (lihat ms 101A–C); *Beckwith v R* (1976) 12 ALR 333 dan *Australian Alliance Assurance Co Ltd v Attorney-General (Queensland)* (1916) QSR 135 diikut.]

Notes

For cases on indefeasibility of title and interests, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1837–1896.

For cases on construction of statutes, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1454–1578.

Cases referred to

Abirami Ammal & Anor v MSMM Meyappa Chettiar [1959] MLJ 149 (refd)

Australian Alliance Assurance Co Ltd v Attorney-General (Queensland) [1916] QSR 135 (folld)

Beckwith v R (1976) 12 ALR 333 (folld)

Commonwealth v Baume (1905) 2 CLR 405 (refd)

Dr Benjamin George & Ors v Majlis Perbandaran Ampang Jaya and other applications [1995] 3 MLJ 665 (folld)

Ong Chat Pang & Anor v Valliappa Chettiar [1971] 1 MLJ 224 (folld)

Overseas Union Finance Ltd v Lim Joo Chong [1971] 2 MLJ 124 (refd)

Yong Joo Lin & Ors v Fung Poi Fong [1941] MLJ 63 (folld)

Legislation referred to

Land Code (FMS Cap 138) s 42

National Land Code 1965 ss 206(3), 340, 341

Appeal from: Civil Suit No 178/1982 (High Court, Ipoh)

Gurbachan Singh (*Bachan & Kartar*) for the appellants.

DP Vijandran (*DP Vijandran & Associates*) for the respondent.

Gopal Sri Ram JCA (delivering the judgment of the court): This is an appeal against the judgment of the High Court at Ipoh, dismissing with costs the appellants' claim against the respondent for several declarations, the cumulative effect of which would be to impugn the title of the respondent to the subject land. The facts of this case, made complex by the machinations of the first appellant, have been sufficiently analysed and admirably dealt with by the learned judge who tried the action. And we must say at once that he has been extremely kind in his review of the first appellant's conduct. We entertain no difficulty in affirming his findings based on the

A veracity of the witnesses who testified before him and with his conclusion that the appellants ought to fail in the action.

But for the learned judge's observations upon s 340(4)(b) of the National Land Code 1965 ('the Code') which, we must say in all fairness to him, did not affect his decision, written reasons are not called for in this B case. However, his judgment has since been reported in *Krishnadas & Ors v Maniyam* [1993] 3 MLJ 465. And it has been referred to in at least one work upon the subject. See Teo Keang Sood and Khaw Lake Tee *Land Law in Malaysia: Cases and Commentary* (2nd Ed) at p 185. In these circumstances, and since our views do not coincide with those of the learned judge upon the meaning of the provision in question, a written C judgment from this court has become necessary.

In the judgment appealed from, after setting out s 340 of the Code which reads as follows:

> 340 (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, D charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) The title or interest of any such person or body shall not be indefeasible —
>
> (a) in any case of fraud or misrepresentation to which the person or E body, or any agent of the person or body, was a party or privy; or
>
> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
>
> (c) where the title or interest was unlawfully acquired by the person F or body in the purported exercise of any power or authority conferred by any written law.
>
> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection (2) —
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and G
>
> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this subsection shall affect any title or interest acquired by any purchaser in good faith and for H valuable consideration, or by any person or body claiming through or under such a purchaser.
>
> (4) Nothing in this section shall prejudice or prevent —
>
> (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred I by any such law; or
>
> (b) the determination of any title or interest by operation of law.

the learned judge said (at p 473):

> In my view, it is quite impossible to regard para (b) [the reference here is to s 340(4)(b)] as another such exception to the indefeasibility. For one thing, the words are very vague, viz 'operation of law', which mean the carrying into effect of the law or working of the law. The scope of the words is practically unlimited, given the ordinary meaning of the words and without their having any further word of limitation. If counsel's contention is carried to its logical conclusion, the indefeasibility can be destroyed on any legal ground at all. It will then make nonsense of the elaborately described exceptions of fraud, forgery, etc. Above all, it will practically destroy the central theme or the foundation of the Torrens system.

With respect, we do not agree with these views because they do not accord with well-established authority.

Section 340 is no newcomer to our land law. Its precursor, s 42 of the FMS Land Code (Cap 138) ('the Land Code') which also housed the Torrens doctrine of indefeasibility read as follows:

> 42 (i) The title of a proprietor, chargee or lessee shall be indefeasible except as in this section provided.
>
> (ii) In the case of fraud or misrepresentation to which he is proved to be a party the title of such proprietor, chargee or lessee shall not be indefeasible.
>
> (iii) If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void.
>
> (iv) Nothing in subsections (ii) or (iii) shall affect the title of a proprietor, chargee or lessee who has taken *bona fide* for valuable consideration from any proprietor, chargee or lessee whose registration as such was procured by any such means or by means of any such instrument as aforesaid or of any person claiming *bona fide* through or under him.
>
> (v) When at the time the proprietor becomes registered a tenant shall be in possession of the land under an unregistered lease or agreement for a lease or for letting for a term not exceeding one year the title of the tenant under such lease or agreement shall prevail.
>
> (vi) Nothing in this section shall be construed so as to prevent the title of any proprietor being defeated by operation of law.

In our judgment, the difference in language between the two sections — s 42 of the Land Code and s 340 of the Code — does not result in any difference in meaning or consequence. It follows that the cases that have interpreted s 42 of the Land Code may safely be relied upon when construing s 340 of the Code.

In *Yong Joo Lin & Ors v Fung Poi Fong* [1941] MLJ 63, the FMS Court of Appeal was concerned, inter alia, with the interpretation of s 42(vi) of the Land Code. Although the actual decision in that case has since been overruled by s 341 of the Code, we consider the following observation by Terrell Ag CJ (Straits Settlements) (at pp 68–69), with which Gordon Smith Ag JA agreed, to be of particular assistance:

A The only explanation that the respondent could give of s 42(vi) was that it referred to various circumstances by which the title of the proprietor could be defeated under the provisions of the Land Code itself. Mr Braddell referred the court to several sections relevant to this argument. Under s 30(iv), if the proprietor is dead and no legal personal representative has been appointed, the property reverts to the state. Under s 37(i), land may B be forfeited for breach of any condition, express or implied. Under s 102(ii) the proprietor's title is extinguished on surrender. Under Part XVIII, land may be sold for non-payment of rent, and under s 217, if no sufficient bid is received, the land can be forfeited to the state, and s 240 provides for rectification of the register by order of court. The answer to this argument is that all the provisions referred to appear in the same or in a similar form C either in the Land Code of 1911 or the Registration of Titles Enactment of 1911, and that the sections themselves provide for the defeasance of the registered proprietor's title in the particular circumstances referred to. It was not found necessary in the 1911 Enactments to have any provision corresponding to s 42(vi), and the provisions above referred to would be equally effective in the 1926 Code without s 42(vi). *It must, I think, be* D *presumed that the legislature would not have inserted a provision which, if Mr Braddell's argument is accepted, would be redundant and unnecessary. The inference, therefore, is that the subsection was inserted for some other purpose, that purpose being the protection of interests which could previously have been protected by a caveat or by some memorandum on the register.* So far as easements are concerned, the title of the proprietor would not of course be defeated E absolutely, but only pro tanto, but, in my opinion, the words would cover this eventuality without giving them any forced construction.

It was pressed upon the court that the Land Code is comprehensive and conclusive, and that a registered title being prima facie indefeasible, can only be defeated where the Land Code itself so provides. I think, however, that this contention is too wide. It appears to me that the register is only F conclusive as to things that can be registered. (Emphasis added.)

It is noteworthy that the very argument that commended itself to the learned judge in the present case was advanced by Mr Braddell of counsel in *Yong Joo Ling* and rejected by the FMS Court of Appeal. We also note that Parliament has given legislative sanction to the views expressed by the G acting Chief Justice of the Straits Settlements in *Yong Joo Lin* on the nature of our version of the Torrens system by enacting s 206(3) of the Code which provides as follows:

(3) Nothing in subsection (1) shall affect the contractual operation of any transaction relating to alienated land or any interest therein.

H In *Ong Chat Pang & Anor v Valliappa Chettiar* [1971] 1 MLJ 224, a case decided under the Land Code, Gill FJ (as he then was) when applying the decision in *Yong Joo Lin* said (at p 232):

The term 'operation of law' in sub-s (vi), as Das on *Torrens System in Malaya* points out at p 235, is a generic term deliberately used by the I legislature to grant relief in cases where contractual or conscientious obligations (importing a breach of duty to which equity has attached its sanction) are undertaken by or imposed on the registered proprietor either at law or in equity.

The effect of s 340(4)(b) of the Code has been admirably summarized by Faiza Tamby Chik J in *Dr Benjamin George & Ors v Majlis Perbandaran Ampang Jaya and other applications* [1995] 3 MLJ 665 at p 697 as follows:

> Registration under s 340 of the National Land Code 1965 ('the NLC') confers an indefeasible title to the developer. However, ss 206(3) and 340(4)(b) of the NLC preserve the in personam rights (contractual or equitable) existing between the developer and the purchaser of an apartment by virtue of the sale and purchase agreement for an apartment entered into by the parties.

We are of opinion that the views expressed by Terrell Ag CJ in *Yong Joo Lin* and by Gill FJ in *Ong Chat Pang* accurately reflect the meaning and effect of s 340(4)(b) of the Code. We also accept what was said by Faiza Tamby Chik J in *Dr Benjamin George* as a correct statement of the law.

In our judgment, Parliament enacted s 340(4)(b) for the purpose of dealing with fact patterns that do not fall squarely within the other exceptions to indefeasibility that appear in the second subsection to s 340 of the Code. While recognizing that it is neither possible, nor desirable to predict with any degree of certainty the wide range of cases that, while failing to come within the vitiating categories specified by the second subsection, may yet come within the scope of s 340(4)(b), we cite, by way of illustration only, cases decided under the Moneylenders Act 1951.

Thus, in *Abirami Ammal & Anor v MSMM Meyappa Chettiar* [1959] MLJ 149, the Malayan Court of Appeal having held that a charge over land given by the borrower to secure a loan obtained from a licensed moneylender to be fatally flawed for non-compliance of s 16 of the Moneylenders Ordinance 1951 made an order 'for the return of the documents of title and entry of a memorandum of discharge on the land register'. See Thomson CJ and Rigby J at p 152 of the report.

Again, in *Overseas Union Finance Ltd v Lim Joo Chong* [1971] 2 MLJ 124, Raja Azlan Shah J (as he then was) found a charge over land to be unenforceable as it had contravened s 16(3) of the Moneylenders Ordinance 1951. His Lordship, having dismissed the chargee's application for an order for sale, proceeded to direct the chargee to execute a memorandum of discharge of the charge.

Accepting, for a moment, the argument that the phrase 'operation of law' is to be read as referring to the provisions of s 340(2), it would mean that in such cases as *Abirami Ammal* and *Lim Joo Chong*, where there was no suggestion of fraud, forgery or any of the other matters to which the second subsection refers, the chargor would be unable to rid the register of the offending charge notwithstanding that the entire transaction was in violation of written law. The resultant incongruity would in itself be a sufficient answer to the proposition advanced.

There is a second and equally compelling reason for rejecting the argument. It is this. The function of a court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment.

A Prima facie, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases. A judicial interpreter is therefore not entitled to disregard words used in a statute or subsidiary legislation or to treat them as superfluous or insignificant. It must be borne in mind that:

B

> As a general rule a court will adopt that construction of a statute which will give some effect to all of the words which it contains. (Per Gibbs J in *Beckwith v R* (1976) 12 ALR 333 at p 33.)

See also *Commonwealth v Baume* (1905) 2 CLR 405 at p 414, per Griffith CJ.

Where it is impossible to give a full and accurate meaning to every C word appearing in a section of a statute, the duty of the court is to give the words an interpretation 'that produces the greatest harmony and the least inconsistency': *Australian Alliance Assurance Co Ltd v Attorney-General (Queensland)* [1916] QSR 135 at p 161, per Cooper CJ.

Based on the authorities that have settled the law relating to the D construction of statutes, we are unable to accept that Parliament intended s 340(4)(b) to have no effect whatsoever or to lack in meaning. Quite to the contrary, we are of the view that the subsection ought to receive the construction it has received in the cases earlier discussed.

Save and except to the extent that we dissent from the views expressed by the learned judge upon the issue of law thus far discussed, we are in E agreement with all other findings made by him. The appeal was accordingly dismissed and those orders made that are usually consequent upon a dismissal.

Appeal dismissed.

F

Reported by Koay Sook Kuan

G

H

I